(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

SECOND APPEAL NO. 90 OF 2004

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. V. A. Lawande, Advocate for the Appellants.

CORAM : A. P. LAVANDE, J.

DATE : 11th FEBRUARY, 2005.

P.C. :

1. Heard Mr. Lawande, Advocate for the Appellants. By this Appeal, the appellant challenges the Judgment and decree dated 27.02.04, passed by the Ld. IInd Addl. District Judge, North Goa at Panaji in Regular Civil Appeal No.

91/2003 partly allowing the appeal against the Judgment and decree dated 06.05.03, passed by the Civil Judge, Junior Division, Bicholim in Regular Civil Suit No. 118/2000/C.

2. The respondent herein filed the above mentioned suit against the appellants in the present appeal, seeking recovery of possession of the suit house, for recovery of value of utensils and clothes to the extent of Rs.4,000/- and the value of timber to the extent of Rs.25,000/- alongwith interest thereon from the month of April'93 till its effective payment. The respondent also claimed damages. The suit was decreed by the trial Court. The appeal preferred by the present appellants was partly allowed.

The lower appellate Court maintained the decree in favour of the respondent herein in so far as the recovery of possession of the suit premises is concerned.

3. Mr. Lawande, learned Counsel appearing for the appellants submitted that since the appellants denied that the respondent was the wife of late Dattatraya Parulekar, who was the tenant of the appellants, it was necessary for the respondent to establish that she was the wife of late Dattatraya Parulekar. I am unable to accept this submission, since no issue has been framed by the trial Court and in my opinion rightly because there was no specific denial in the written statement filed by the appellants

about the status of the respondent as the wife of late Dattatraya Parulekar.

4. Mr. Lawande, further submitted that since the respondent claimed to be the tenant, the Civil Court had no jurisdiction to decide the issue and consequently the Judgment and decree passed by both the Courts below are without jurisdiction. I am unable to accept the submission since under the Goa, Daman and Diu Rent Controller Act, there is no provision which gives exclusive jurisdiction to the Rent Controller to decide the issue of tenancy. Such provisions are found in the Mundkar's Act and Agricultural Tenancy Act which gives exclusive jurisdiction to decide issue of

tenancy or mundkarship to certain authorities. I am unable to accept that Civil Court cannot decide the issue of tenancy in a suit filed by the tenant on the ground of dispossession by the owner/landlord. The learned Counsel has relied upon section 56 of the Rent Control Act which reads as under :

> "Save as provided in this Act, no court shall have juridiction to settle, determine or deal with any question which is by or under this Act required to be settled, determined or dealt with by the Controller, the Rent Tribunal, the Appellate Board, the Administrative Tribunal, or the Administrator, and no order passed by any such authorities under this Act shall be called in question in any court".

Perusal of section 56 reveals that that the question which is required to be decided by authorities under the Act,

cannot be decided by the Civil Court, but if one looks at the provisions of the Rent Control Act, there is no provision under the Act which ousts the Jurisdiction of Civil Court to decide the issue of tenancy.

5. I have perused the Judgments given by both the Courts below. The Lower Appellate Court has given findings which are based on evidence on record and therefore they cannot be termed as perverse. I am unable to accept the submission of the learned Counsel that grounds A, D, E, F and H mentioned in para 6 of the memo of appeal are substantial questions of law.

6. In the result, therefore, I do not find any merit in this Appeal. No substantial question of law is involved in the present appeal and as such the appeal is summarily rejected.

A. P. LAVANDE, J.

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